



Town Council Agenda Report

SUBJECT: Resolution

TITLE OF AGENDA ITEM:

A resolution of the Town of Davie, Florida, authorizing the Town of Davie to approve and execute an agreement with Joseph Kelljchian for martial arts programs at various locations throughout the Town.

REPORT IN BRIEF:

The Town provides recreational martial arts programs at various facilities in the Town of Davie. Instructional recreation programs such as martial arts benefit the participants and the Town of Davie. The agreement allows the Instructor to be paid seventy five (75) percent of the fee that is collected from the participant. The Town receives twenty five (25) percent of the fee, which compensates the Town for the use of facilities, overhead and advertising costs for the class. The Instructor collects the entire fee (the checks are made out to the Town) and submits them along with a roster to the Town, after the registration period. The Town then pays the Instructor, on a regular cycle, once the class has started. The martial arts instructor has taught for the Town since 1981, and I foresee no problem with this class. The expected payment of \$30,000 to the Instructor requires the agreement to be approved and signed by the Town Council. The Instructor is providing the certificate of insurance, with the Town included as "additional insured".

PREVIOUS ACTIONS: Joseph Kelljchian has been the martial arts instructor for the Town since 1981. Last year, by resolution R 99-295, Council approved his contract. Because this program is expanding to various facilities and requires additional instructors, the Town did a formal request for proposal for Martial Arts Instructor RFP B-00-125.

CONCURRENCES: RFP B-00-125
Control #00-1118 to Monroe Kiar, Town Attorney

FISCAL IMPACT:
Has request been budgeted? yes no
If yes, expected cost \$30,000
Account Name: Contractual Services

RECOMMENDATION(S): Motion to approve resolution.

Attachment(s):
Resolution and Agreement.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO APPROVE AND EXECUTE AN AGREEMENT WITH JOSEPH KELLJCHIAN FOR MARTIAL ARTS PROGRAMS AT VARIOUS LOCATIONS THROUGHOUT THE TOWN.

WHEREAS, the Town of Davie is desirous of sponsoring a martial arts instructional recreational program; and

WHEREAS, a formal RFP was dissimulated, and Joseph Kelljchian was the only responding bidder; and

WHEREAS, Joseph Kelljchian has been a Martial Arts Instructor for the Town since 1981; and

WHEREAS, the Instructor's fee is based upon the number of students that register and pay for the class; and

WHEREAS, due to the increased availability of locations on a Townwide basis and the popularity and quality of instruction, the Instructor will be compensated 75% of the class fee, not to exceed \$30,000; and

WHEREAS, the Town has verified that Martial Arts Instructor Joseph Kelljchian's qualifications, experience and capability to perform fully the requirements for such a program, and has determined that Joseph Kelljchian has the necessary staff with expertise, skills and capabilities to provide the required services; and

WHEREAS, this agreement has been reviewed by the Town Attorney; and

WHEREAS, Town and Martial Arts Instructor Joseph Kelljchian wish to enter into this Agreement; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to approve this agreement with Joseph Kelljchian for martial arts programs.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

with Joseph Kelljchian for martial arts instruction at various Town of Davie locations and in multiple time intervals throughout the fiscal year 2000/2001.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000

AGREEMENT BETWEEN THE TOWN OF DAVIE
AND JOSEPH KELLJCHIAN RELATING TO
JOINT RECREATIONAL MARTIAL ARTS PROGRAMMING

THIS AGREEMENT, made and entered into this 5th day of December, 2000, by and between:

Town of Davie, Florida
a municipal corporation
6591 Orange Drive
Davie, Florida, 33314
(hereinafter referred to as "TOWN")

AND

Joseph Kelljchian
5031 SW 160 Avenue
Fort Lauderdale, Florida 33331
(hereinafter referred to as "INSTRUCTOR")

WITNESSETH

WHEREAS, the Town of Davie is desirous of sponsoring a martial arts instructional recreational program; and

WHEREAS, a formal RFP was dissimulated, and Joseph Kelljchian was the only responding bidder; and

WHEREAS, Joseph Kelljchian has been a Martial Arts Instructor for the Town since 1981; and

WHEREAS, the Instructor's fee is based upon the number of students that register and pay for the class; and

WHEREAS, due to the increased availability of locations on a Townwide basis and the popularity and quality of instruction, the Instructor will be compensated 75% of the class fee, not to exceed \$30,000; and

WHEREAS, the Town has verified that Joseph Kelljchian's qualifications, experience and capability to perform fully the requirements for such a program, and has determined that Joseph Kelljchian has the necessary staff with expertise, skills and capabilities to provide the required services; and

WHEREAS, this agreement has been reviewed by the Town Attorney; and

WHEREAS, Town and Joseph Kelljchian wish to enter into this Agreement to outline the parties' responsibilities for the use of the Town's facilities during this proposed martial arts program.

IN CONSIDERATION of the mutual covenants and agreements as herein set forth, sufficiency of which consideration is hereby acknowledged, the parties agree as follows:

1. TERM:

the parties adopted with the same formality as the original.

2. JOINT RECREATION PROGRAMS:

2.1 Town and Instructor agree to offer a joint recreational martial arts recreational program which will include, but not be limited to the following days, times, and locations:

Karate Programs

Ivanhoe Community Center, 6101 SW 148 Avenue, Davie
Monday and Thursday, 6:30 p.m. - 9:30 p.m.

Orange Park Community Center, 841 SW 133 Avenue, Davie
Tuesdays, 6:30 p.m. - 9:30 p.m.

Pine Island Park Community Center, 3800 SW 92 Avenue
Monday and Wednesday 6:30 p.m. - 9:30 p.m.

Shenandoah Park Activity Room, 14452 Shenandoah Parkway
Dates and times to be determined.

*Closed holidays and election days, if facility is being used for voting during scheduled times.

3. DUTIES OF JOSEPH KELLJCHIAN, MARTIAL ARTS INSTRUCTOR:

3.1 Development and Implementation of Recreational Martial Art Programs:

The Instructor shall formulate, implement, direct, manage and control a complete and full service recreation martial arts program for children, adults and special populations. The duties of the Instructor pertaining to these programs are as follows:

3.1.1 Organize and supervise recreational martial arts program as defined in Paragraph 2.1 of this Agreement. A minimum number of twelve (12) registered participants is required to commence program.

3.1.2 Use Instructor's best efforts to promote the programs outlined in Section 2, and further endeavor to heighten public interest and an awareness of these activities through advertising.

3.1.3 Select, hire and employ at Instructor's sole expense, all instructors, assistants and staff necessary to Instructor's performance of duties and obligations under the terms of this Agreement provided, however, that all teaching staff shall be over the age of eighteen (18) years old. Subcontractors must be qualified. None of the employees of Joseph Kelljchian shall be deemed employees or agents of the Town of Davie for any purposes whatsoever. The Instructor is acting as an independent contractor with regard to this license and no agency relationship is created between the Instructor and the Town by virtue of this agreement.

3.1.4 Manage, control and supervise all instructors, assistants and staff employed by Joseph Kelljchian.

3.1.5 Be fully responsible for the payment and maintenance of all insurance, taxes and other incidents of employment for those persons hired by Joseph Kelljchian to assist in the fulfillment and obligations under this Agreement.

enrollment records, as well as, financial records. Such records shall be kept so as to satisfy standard bookkeeping requirements. Such records shall be made available to the Town for inspection, review and auditing within ten (10) calendar days written notice from Town. Notwithstanding the provisions set forth in this paragraph, it is agreed that the Instructor will cooperate in all respects with the Town with regard to compliance with the public records law of the State of Florida.

3.1.8 Maintain all necessary licenses and permits, including but not limited to HRS licenses, if applicable as required by law.

3.1.9 Instructor will provide Florida protective services background check on HRS Form 1651 for all employees.

3.1.10 Supervise and be responsible and legally liable for the safety and conduct of all participants at any event or activity conducted by Instructor and its agents, volunteers or employees engaged in the performance of Instructors duties under this Agreement. Copy of license will be given to the Town of Davie.

3.1.11 We do not permit any signs or advertising at any Town facility unless specifically approved in writing by the Parks and Recreation Director.

3.1.12 Perform all tasks which are reasonably necessary to be done in order to accomplish the work and objectives as otherwise provided for under this Agreement.

3.1.13 Instructor shall provide all martial arts program supplies, and materials.

3.1.14 The Instructor shall sign out any Town of Davie equipment and shall return it in good condition.

3.1.15 All dates, times and locations must be approved by the Parks and Recreation Director prior to Instructor commencing any activities under this Agreement.

3.1.16 Notify the Parks and Recreation Director and all registered participants immediately if the martial arts program is to be canceled in accordance with the provisions of this Agreement.

3.1.17 Insure that all facilities are kept free of litter and debris during and immediately after their use under this Agreement.

3.1.18 Instructor shall comply with the Drug Free Workplace Act.

3.2 Joseph Kelljchian's Duty to Inspect and Make Safe:

3.2.1 The Instructor shall conduct a thorough examination and inspection of the premises and equipment to identify any unsafe condition or defect prior to the commencement of any of its duties, operations and services under this Agreement. The Instructor will inform the representatives at the Town of Davie of repairs needed at the facility and/or equipment that is in need of repairs. Repairs shall be completed by the Town of Davie within seven (7) or fewer days once notification by the Instructor is made. Notification may be verbal, but must be immediately followed up with a written notice.

3.2.2 If, in the course of its use and/or operations, the Instructor or any agent, representative employee or volunteer of the Instructor becomes aware or should become

4. REGISTRATION:

4.1 The Instructor shall handle the registration process, including the collection of fees. All participants are required to complete the Town of Davie Parks and Recreation registration form. The Instructor shall bring to the Parks and Recreation Department all completed registration applications and fees.

5. FEES:

5.1 The martial arts program fee will be \$25.00 per month for participants at Ivanhoe Community Center, Pine Island Community Center, and Shenandoah Park Activity Room. The martial arts program fee will be \$12.00 per month for participants at Orange Park Community Center. Scholarships are provided based on financial need.

5.2 All checks shall be payable to the Town of Davie. The remuneration to the Town of Davie for the martial arts program will be 25%.

5.3 The Instructor will issue registration applications and attendance sheets for the month with an invoice summarizing the total number of participants attending each week by the 15th of the following month.

5.4 Penalty for late payment. In the event the Instructor fails to submit registration fees to the Town as required in article 5.3, hereunder within five (5) days of the due date, there shall be added to such payment a late charge of \$50, and interest at the highest rate allowed by law until the payment is brought up to date.

5.5 It will be the responsibility of the Instructor to collect any outstanding fees. If a check is returned for any reason, the participant MUST pay in cash for all future payments.

5.6 The Instructor will be required to provide one (1) scholarship per fifteen (15) registrations for any Davie children that meet the Federal Hot Lunch Program Guidelines and cannot afford the cost of the martial arts program.

6. ADVERTISING AND PROMOTION:

6.1 The Instructor may use advertising in promoting the programs at the assigned Town facilities. The Instructor may specifically use the name of those Town facilities provided that when so doing they are identified as Town of Davie Parks and Recreation facilities. The cost of all advertising promulgated by the Instructor shall be paid by the Instructor and approved in writing by the Parks and Recreation Director before publication.

6.2 Town also reserves the right to advertise and promote the programs provided for under this Agreement and the services of the Instructor as described herein. Town shall be allowed to use the Instructors name and appropriate likeness in any such advertising or promotion without additional compensation to the Instructor. The cost of advertising for promotion promulgated by Town will be paid by Town and approved in writing by the Instructor before publication. The Town of Davie will advertise the martial arts program in the Davie Update (sent to Davie residents).

7. PREMISES:

7.1 All Town premises are provided in "as is" condition. Town disclaims all

liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for:

- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Independent Contractors

3. Business Automobile Liability Insurance - coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for owned autos, hired autos and non-owned autos.

Insurance must be furnished to the Town's Purchasing Division and notification received of its approval by the Town's Risk Manager PRIOR TO THE COMMENCEMENT of any work. Failure to do so will result in the recommendation to terminate the contract immediately. The Town will be given 15 days written notice of any cancellation or material change in any policy.

8.3.2 No operations under this Agreement shall be commenced until the required certificate of insurance naming the Town of Davie as additionally insured has been received and approved by the Administrative Services Department.

8.4 INDEMNITY/HOLD HARMLESS AGREEMENT: The Instructor agrees to protect, pay defense costs, indemnify and hold harmless the Town of Davie and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney fees, in connection with or arising directly or indirectly out of the work agreed to be performed by the Contractor under the terms of the agreement. Without limiting the foregoing, any and all such claims, suits, or other actions, relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder, excluding any gross negligence or intentional act of the Town of Davie. Notwithstanding the provisions herein, the Town of Davie does not waive any rights to sovereign immunity provided by law.

9. PROTECTION OF PUBLIC SAFETY:

9.1 The Instructor shall exercise reasonable care and precaution at all times for the protection of persons and property on the premises provided under this Agreement. Safety provisions of all applicable laws and ordinances shall be strictly observed. Town reserves the right to expel any person from municipal property who is causing a disturbance, is conducting themselves in violation of Town rules, regulations, ordinances or whose conduct or activity presents a safety risk or public nuisance. Neither Town nor any of its officers, agents or employees shall be liable to the Instructor for any damages that may be sustained by the Instructor through exercise by Town of such right.

10. TRAINING:

10.1 The Instructor represents that each staff member hired by the Instructor and working at and under the direction and supervision shall also have sufficient experience and/or education to provide proper supervision and instruction to persons of various ages and skill levels.

11 TERMINATION:

12. MODIFICATION AND WAIVER:

12.1 This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. Modification to this Agreement can only be made in writing and by execution of both parties. Reference to the Agreement shall be deemed to include any duly executed modification or amendment. The failure of a party to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

13. ASSIGNMENT:

13.1 This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstance without prior written consent from the other contracting party.

13.2 This agreement is for the benefit of the executing parties and is not to provide any rights to third parties as third party beneficiaries.

14. NOTICE:

14.1 Notices required by this Agreement shall be deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses:

AS TO TOWN: Sharon Kent
Parks and Recreation Director
6901 Orange Drive
Davie, Florida 33314

AS TO INSTRUCTOR
Joseph Kelljchian
5031 SW 160 Avenue
Fort Lauderdale, Florida 33331

15. GOVERNING LAW AND VENUE:

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida with venue for any litigation thereon to be found in the Seventeenth Judicial Circuit in and for Broward County, Florida.

16. SEVERABILITY:

16.1 If any part of this Agreement is found to be in conflict with applicable laws, such part shall be null and void insofar as it is found in conflict with the laws of the State of Florida, but the remainder of the Agreement shall be and remain in full force and effect.

17. LICENSE NOT A LEASE:

17.1 This Agreement shall not be deemed to be a lease of any facilities, the use of which is permitted hereunder, but rather a license to use and occupy the respective premises under the terms and conditions stated herein

services, and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or disability.

18.2 No persons, on the grounds of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or disability shall be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination in the use of said materials or offering of services by the Instructor.

IN WITNESS WHEREOF, the parties hereto have executed this Reciprocal Use Agreement the day and year first written above.

JOSEPH KELLJCHIAN

TOWN OF DAVIE, FLORIDA

JOSEPH KELLJCHIAN

BY: _____
MAYOR

ATTEST:

TOWN CLERK

STATE OF FLORIDA)
) ss.
COUNTY OF BROWARD)

JOSEPH KELLJCHIAN

BY: _____

STATE OF FLORIDA)
) ss.
COUNTY OF BROWARD)

I HEREBY CERTIFY, that on the _____ day of _____ 2000, personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Joseph Kelljchian, signed this Agreement on the _____ day of _____, 2000.

WITNESSETH my hand and official seal at _____, Broward County, Florida this _____ day of _____, 2000.